

U.S. Patent Application Serial No. 10/535,422  
Response filed December 11, 2008  
Reply to OA dated September 15, 2008

### **REMARKS**

Claims 1-19 are pending in this application. Claims 9, 10, 17 and 19 are canceled without prejudice or disclaimer, claims 1-8, 11-16 and 18 are amended and claim 20 is newly added herein. Upon entry of this amendment, claims 1-8, 11-16, 18 and 20 will be pending. Entry of this amendment and reconsideration of the rejections are respectfully requested.

No new matter has been introduced by this Amendment. Support for the amendments to the claims is discussed below.

**Claims 1-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over Berns (U.S. Patent No. 5,503,687) in view of Wikipedia ([http://en.wikipedia.org/wiki/Ferritic\\_stainless\\_steel](http://en.wikipedia.org/wiki/Ferritic_stainless_steel)) and further in view of Speidel et al. (U.S. Patent No. 5,714,115). (Office action paragraph no. 3)**

The rejection of claims 9, 10, 17 and 19 is moot in view of the cancellation of these claims without prejudice or disclaimer. Reconsideration of the rejection of claims 1-8, 11-16 and 18 is respectfully requested in view of the amendments to the claims.

Claim 1 has been amended to specifically recite “A method for producing a stent expandable in outside diameter ....” Support for this recitation may be found, for example, in paragraph [0019] of the specification.

In addition, the working step in claim 1 has also been amended as follows: “a working step of working said ferritic stainless steel ~~to the shape of a medical device for living soft tissue to obtain~~

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~~a medical device body~~ tube to have a repeating shape on the peripheral surface in expanded form to obtain the stent.” Support for the formation of a tube may be found in paragraph [0027] and support for the repeating shape may be found in paragraphs [0018] and [0019].

Also, the last clause in claim 1 has been amended as follows: “to transform ~~at least part of~~ said ferritic stainless steel tube to austenite.” Support for this amendment may be found in paragraph [0029] of the specification.

In the rejection, the Examiner generally cites Berns as in the previous Office action, but acknowledges that Berns does not disclose that the ferritic stainless steel is substantially free of nickel. The Examiner then states:

"However, it would have been obvious to one of ordinary skill in the art that the ferritic stainless steel of Berns ('687) would obviously meet the claim limitation of the content of nickel because the ferritic stainless steel is well known to have very little nickel, which reads on the claim limitation of substantially free of nickel, as disclosed by Wikipedia"

The Examiner cites Wikipedia at column 1, lines 5-48, as stating that Wikipedia teaches enriching the surface of low-nitrogen-content stainless steel produced by an open steel smelting process, with nitrogen, to increase the wear resistance of the steel, and a working step will inherently be involved in shaping the stainless steel of Berns.

Applicant submits, first of all, that the Wikipedia citation is not a proper reference, since the content of Wikipedia constantly changes, and there is no documentation that the present content of the webpage was available before the effective US filing date of the present application (November 11, 2003). See MPEP 2128 in this regard.

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Although the ferritic stainless steel is known to contain very little Ni, it actually does contain Ni, which can still cause a serious adverse effect. Unlike this, the present invention has achieved to produce a stent for a living soft tissue without Ni which can be used safely without the risk of the adverse effect.

Furthermore, Examiner states that Berns ('687) inherently comprises the melting step and the working step of the present invention. However, the working step of claim 1 has been amended to recite: "working said ferritic stainless steel ~~to the shape of a medical device for living soft tissue~~ to obtain a medical device body tube to have a repeating shape on the peripheral surface in expanded form to obtain the stent." Neither Berns ('687) nor Speidel ('115) discloses this step.

Since Berns ('687) fails to specify a method for producing a stent, and there is no suggestion in the references for the working step of amended claim 1, the references cannot be combined to produce the invention of claim 1. Claims 1-8, 11-16 and 18 are therefore not obvious over the cited references.

**Regarding new claim 20.**

New claim 20 depends from claim 1, and is supported by paragraph [0028] of the present specification. Claim 20 recites the use of photosensitive cross-linkable resist to obtain a stent having the repeating shape in expanded form. As argued above, cited references Berns ('687) and Speidel ('115) do not disclose the working step of amended claim 1, to have a repeating shape on the

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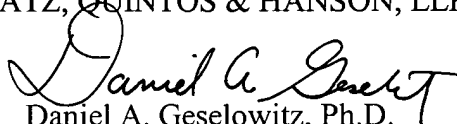
peripheral surface in expanded form to obtain the stent, and also do not disclose the use of a photosensitive cross-linkable resist to obtain a stent having a repeating shape.

Therefore, new claim 20 is also not obvious over the references cited in the rejection of base claim 1.

If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the applicants' undersigned agent at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, the applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 01-2340.

Respectfully submitted,  
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